

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIAGEN, INC., ET AL	)	CA 03-11329
	)	Boston, MA
v.	)	June 22, 2004
	)	
COLUMBIA UNIVERSITY, ET AL	)	

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

JUDITH A. TWOMEY, RPR  
Official Court Reporter  
One Courthouse Way  
Courtroom 10-Room 5200  
Boston, MA 02210  
(617) 946-2577

1 tape.

2 THE COURT: But Biogen has already paid for it  
3 once. First, they did it with power point, and I had a  
4 book, and so I had each slide and I could write on it.  
5 And then they had something that was animated the second  
6 time. But it exists, and it's the same technology,  
7 right? I mean, it's the same process.

8 All right, we need to build in a date for the  
9 tutorial, which should be after November 1, right? But  
10 not too far after it. How about the 5th. Is that okay?

11 MS. BEN-AMI: On your calendar, I just wanted to  
12 remind your Honor that I am at trial during the time  
13 period --

14 THE COURT: But you've got to do the following.  
15 You've, first of all, got to get somebody else with you.  
16 I hope some of those 40 people were with you.

17 MS. BEN-AMI: I have one.

18 THE COURT: Get two more. And that's one. And  
19 you all think you're going to win on summary judgment.

20 MS. BEN-AMI: I agree with that.

21 THE COURT: We'll cross that bridge when we come  
22 to it.

23 MR. GINDLER: There's one other date I think we  
24 should set now, which is a last day by which pleadings  
25 should be amended, because we have counterclaims that we

1 would like to assert, both breach of contract, which will  
2 live no matter what, and infringement, but won't be done  
3 now, but I think we should at least --

4 THE COURT: Why?

5 MR. GINDLER: Because I think that it's only  
6 fair to just close the pleadings and to put our claims on  
7 the table, and the infringement claims could be  
8 terminated if we lose on double patenting. The breach of  
9 contract claims will not, though, because those simply  
10 applied during the period before anyone sued. And so  
11 those will be royalty claims.

12 We're not proposing to do anything with the  
13 claims. We just think they should be on the table.

14 THE COURT: You have so much to do. Why do  
15 that? I don't know. What do you think? Maybe I'm  
16 missing something.

17 MR. WARE: Your Honor, at least in the case of  
18 Biogen and Genzyme, there is a stand-still agreement that  
19 infringement claims won't be asserted. So it's obviously  
20 not germane to our case. I don't really see why it's  
21 necessary.

22 With respect to contract counterclaims, I think  
23 we would want the opportunity to oppose the time to add  
24 such claims into the case at this point, which come a  
25 year after we sought an declaration of -- that no

1 royalties were owed. So we would certainly at least want  
2 the opportunity to oppose adding such claims into the  
3 case at this point. But I don't see why it's necessary.

4 THE COURT: You'd claim they're futile or  
5 something?

6 MR. WARE: No, I'd claim there are no admitted  
7 counterclaims. We specifically asserted that we did not  
8 owe royalties.

9 MR. GINDLER: We tried to keep activity down to  
10 a low buzz before we got before a single court. It took  
11 us a long time to get here. We started this process in  
12 October of last year, with opposition by every plaintiff,  
13 and we finally got to one court. That's good. So we  
14 want to be as in a position so that if, for example, the  
15 court were to rule against us on double patenting, okay,  
16 that takes a lot out of the case. What's left? Well, we  
17 should know what's left. And so --

18 THE COURT: Frankly, if I rule against you or  
19 the jury finds against you on double patenting, I hope  
20 you're all going to sit down in a businesslike way and  
21 see if you can work it out. That's the purpose of all of  
22 this.

23 MR. GINDLER: But I do think it makes sense to  
24 just put those on the pleadings.

25 THE COURT: Why not put them on the pleadings in

1 the beginning of January?

2 MR. GINDLER: We could do it then.

3 THE COURT: I'm trying to get you off for the  
4 4th of July.

5 MR. GINDLER: You succeeded.

6 THE COURT: Did Mr. Barsky show your wife the  
7 transcript? Some other judge will probably foul it up.

8 MR. BARSKY: I'd point out that there are some  
9 counterclaims, contract counterclaims in the consolidated  
10 cases already. For example, the case I'm counsel on,  
11 Amgen. There are those counterclaims already.

12 THE COURT: I'm really just trying to get this  
13 focused. And maybe I've miscalculated. But I just think  
14 this is -- you know, the validity of this patent is very  
15 important to all of you, and Mr. Goldberger was telling  
16 me Malcolm Baldrige, Secretary of Commerce, has  
17 subsequently said, you know, he could manage adversity,  
18 he couldn't manage uncertainty. And your clients can  
19 manage adversity, but this is really important, I think,  
20 and these products are very important. They're not  
21 widgets. They're very important to human health.

22 MR. GINDLER: If you prefer to have the date in  
23 January, it's okay with us.

24 THE COURT: Yeah. Just try to keep our eye on  
25 this ball and, you know, they think they've got a great

201

CERTIFICATE

I, JUDITH A. TWOMEY, RPR, Official Court Reporter for the United States District Court, District of Massachusetts, do hereby certify that the foregoing transcript, pages 1 through 200 inclusive, was taken by me stenographically and thereafter by me reduced to transcription and is a true record of the proceedings in the above-entitled matter to the best of my ability.

JUDITH A. TWOMEY, RPR  
Official Court Reporter